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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

M-Z-H,

Petitioner,

v.

LAURA HERMOSILLO, Seattle Field Office
Director, Immigration and Customs Enforcement
and Removal Operations ("ICE/ERO"); TODD
LYONS, Acting Director of U.S. Immigration
Customs Enforcement ("ICE"); KRISTI NOEM,
Secretary of the Department of Homeland Security
("DHS"); PAMELA BONDI, Attorney General of
the United States; BRUCE SCOTT, Warden,
Northwest ICE Processing Center ("NWIPC"); ICE;
and DHS.,

Respondents.

Case No. 25-6107

Agency No. A 

**PETITIONER'S MOTION FOR A
TEMPORARY RESTRAINING
ORDER**

**ORAL ARGUMENT
REQUESTED**

1 **PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER**

2 Petitioner M-Z-H is a husband, father, and [REDACTED] from Afghanistan who faces
3 persecution [REDACTED]
4 [REDACTED] After fleeing threats to
5 his life in Afghanistan, Petitioner lawfully presented himself at a port of entry at the U.S.-Mexico
6 border to seek asylum in early December of 2023. Within days, the Department of Homeland
7 Security ("DHS") released Petitioner on his own recognizance. Since then, Petitioner has
8 diligently complied with all conditions of his release, timely filed his asylum application, and
9 fulfilled every requirement imposed by immigration authorities and the Immigration Court.

10 On November 12, 2025, without prior notice, a warrant, or any lawful, individualized
11 finding that he posed a flight risk or danger to the community, Petitioner was arrested by masked
12 Immigration and Customs Enforcement ("ICE") agents outside of his workplace. ICE provided
13 Petitioner with conflicting and false justifications for the unlawful arrest — first falsely claiming
14 he had missed an immigration court hearing, then alleging he had missed an ICE check-in,
15 despite Petitioner's diligent compliance with all his reporting requirements. Petitioner's arrest
16 and re-detention was not based on his individual circumstances, rather, it was a direct result of a
17 systemic, quota-driven policy to conduct mass arrests and deportations.

18 M-Z-H's detention is unlawful for multiple reasons, including because Respondents
19 denied him a meaningful pre-detention opportunity to be heard in violation of his constitutional
20 right to due process and Respondents' own regulations, because Respondents conducted a
21 warrantless arrest even though Petitioner did not violate any immigration laws, nor pose a flight
22 risk. To be sure, the Respondents—a collection of different immigration enforcement agencies—
23 have broken many laws in their quest to detain M-Z-H for their quotas. *See* Petition for Writ of

1 Habeas Corpus at ¶¶ 65-90 (raising three counts of illegal behavior by Respondents). But for the
2 purposes of this motion for a temporary restraining order, M-Z-H seeks to restore the *status quo*
3 *ante litem* with his release because he is likely to succeed on the merits of his due process, INA
4 and APA claims (Counts 1, 2, and 3); he is suffering irreparable harm from his continued
5 detention; and the balance of equities and public interest tip sharply in his favor.

6 Consistent with numerous courts across the country, this Court held in at least four
7 separate cases over the past month that government agents may *not* sweep up any person they
8 wish and hold that person without consideration of dangerousness or flight risk. *See E.A. T.-B. v.*
9 *Wamsley*, No. 25-cv-1192-KKE, --- F. Supp. 3d --- 2025 WL 2402130, at *6 (W.D. Wash. Aug.
10 19, 2025) (ordering immediate release because “a post-deprivation hearing cannot serve as an
11 adequate procedural safeguard because it is after the fact and cannot prevent an erroneous
12 deprivation of liberty”); *Phetsadakone v. Scott*, No. 2:25-CV-01678-JNW, 2025 WL 2579569, at
13 *5 (W.D. Wash. Sept. 5, 2025) (ordering immediate release to secure status quo of liberty prior
14 to alleged unlawful re-detention); Order Granting Mot. for Temp. Restr. Order, *Ramirez Tesara*
15 *v. Wamsley*, 2:25-cv-01723-MJP-TLF (W.D. Wash. Sept. 11, 2025), Dkt. 19 (hereinafter
16 *Ramirez Tesara*, Dkt. 19) (ordering immediate release to restore Petitioner to the status quo prior
17 to his unlawful arrest without a hearing); *Kumar v. Wamsley*, No. 2:25-cv-01772-JHC-BAT, Dkt.
18 11 (W.D. Wa. Sept. 17, 2025) (same).

19 Accordingly, M-Z-H respectfully seeks immediate relief from this Court to restore the
20 status quo of his liberty pending the Court’s adjudication of his Petition for Writ of Habeas
21 Corpus.¹ Petitioner respectfully requests that the Court order Respondents to respond to this
22

23 ¹ Together with the filing of the habeas petition and motion, counsel certifies that they are providing concurrent notice regarding this filing to the U.S. Attorney’s Office for the Western District of Washington via e-mail.

1 Motion by noon on December 12, 2025; allow Petitioner to file a reply by noon on December 15,
2 2025; and issue a decision by December 16, 2025.

3 **I. FACTUAL BACKGROUND**

4 **Respondents' Unlawful Quota Policies**

5 On January 20, 2025, President Donald Trump issued several executive actions relating
6 to immigration, including “Protecting the American People Against Invasion,” an executive
7 order (EO) setting out a series of interior immigration enforcement actions. The Trump
8 administration, through this and other actions, has outlined sweeping, executive branch-led
9 changes to immigration enforcement policy, establishing a formal framework for mass
10 deportation. The “Protecting the American People Against Invasion” EO instructs the DHS
11 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to prioritize civil
12 immigration enforcement procedures, including through mass detention. At the same time,
13 President Trump has indicated that noncitizens like M-Z-H are not entitled to due process, the
14 Fifth Amendment notwithstanding.²

15 In late May, Respondent Secretary Noem and White House Deputy Chief of Staff
16 Stephen Miller met with ICE leadership, setting a new arrest quota of 3,000 arrests per day and
17 reportedly threatening job consequences if officials failed to meet arrest quotas.³

18
19 ² See, e.g., NBC News, Meet the Press interview of President Donald Trump (May 4, 2025),
20 <https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donald-trump-interviewed-meet-press-mod-rcna203514>, <https://perma.cc/9HHY-35JC> (last visited Sept. 18, 2025) (in response to a question
21 about whether noncitizens deserve due process under the Fifth Amendment, President Trump replied “I don’t know.
22 It seems—it might say that, but if you’re talking about that, then we’d have to have a million or 2 million or 3
23 million trials.”).


³ Elizabeth Findell, et al., *The White House Marching Orders That Sparked the L.A. Migrant Crackdown*, The Wall
Street Journal (June 9, 2025), <https://www.wsj.com/us-news/protests-los-angeles-immigrants-trump-f5089877>;
22 Julia Ainsley, et al., *A sweeping new ICE operation shows how Trump’s focus on immigration is reshaping federal
law enforcement*, NBC News (June 4, 2025), <https://www.nbcnews.com/politics/justicedepartment/ice-operation-trump-focus-immigration-reshape-federal-lawenforcement-rcna193494>; Brittany Gibson & Stef W. Kight, Scoop:
23 *Stephen Miller, Noem tell ICE to supercharge immigration arrests*, Axios (May 28, 2025),
<https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller>.

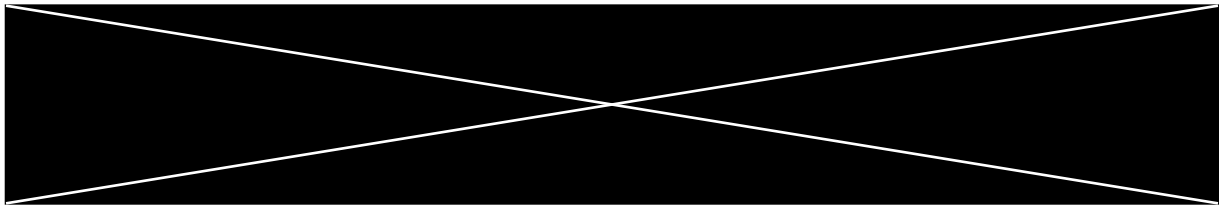
1 On May 28, Miller confirmed that “[u]nder President Trump’s leadership, we are looking
2 to set a goal of a minimum of 3,000 arrests for ICE every day, and President Trump is going to
3 keep pushing to get that number up higher each and every single day.”⁴

4 Following the directive from Noem and Miller, ICE agents were instructed in an e-mail
5 to “turn the creativity knob up to 11” and aggressively “push the envelope” in arrests, including
6 by pursuing “collaterals”—individuals for whom the agency by definition would not have arrest
7 warrants.⁵ As another e-mail put it: “If it involves handcuffs on wrists, it’s probably worth
8 pursuing.”⁶

9 The overriding message, communicated by and to Respondents, is that agents and
10 officers carrying out immigration operations on the ground must prioritize arrest numbers,
11 regardless of detainees’ individual circumstances and the law.

12 **Petitioner’s Credible U.S. Asylum Claim**

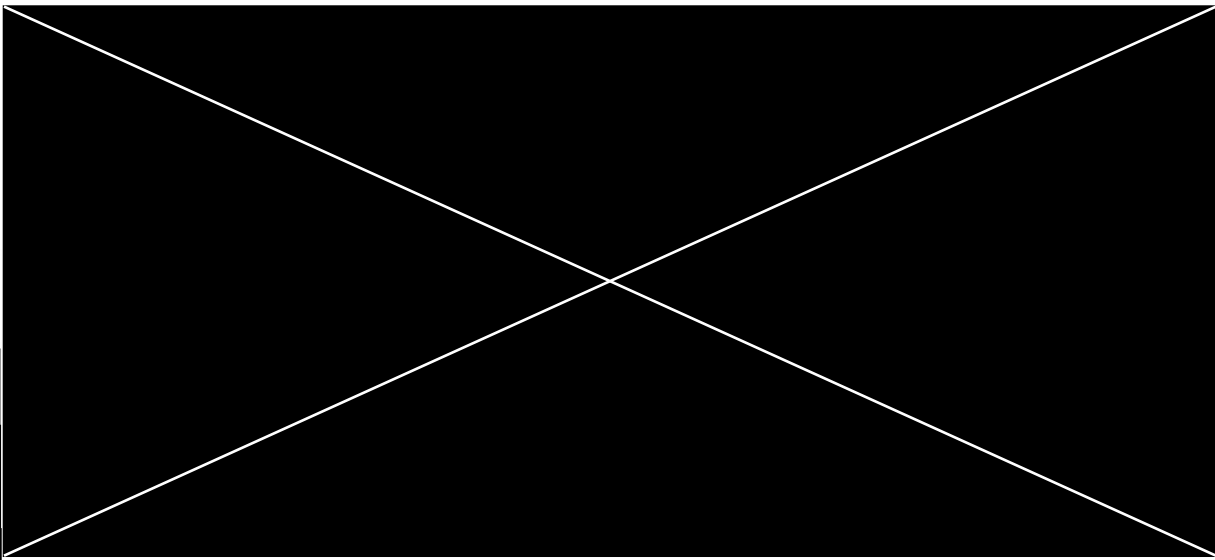
13 Petitioner, M-Z-H, was born in Afghanistan, where he worked as a public servant,
14 married, and had children. Petitioner’s Declaration in Support of Motion for a Temporary
15 Restraining Order (“Petitioner’s Decl.”) ¶ 2-4. After finishing his studies at university, M-Z-H
16 dedicated his life to 

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21 _____
22 ⁴ Hannity, *Stephen Miller says the admin wants to create the strongest immigration system in US History*, FOX
NEWS (May 28, 2025), available at <https://www.foxnews.com/video/6373591405112> (last visited Sept. 18, 2025).

23 ⁵ José Olivares, *US immigration officers ordered to arrest more people even without warrants*, The Guardian (June
4, 2025), [https://www.theguardian.com/us-
news/2025/jun/04/immigration-officials-increased-detentions-
collateral-arrests](https://www.theguardian.com/us-news/2025/jun/04/immigration-officials-increased-detentions-collateral-arrests), <https://perma.cc/54HH-SNSN> (last visited Sept. 18, 2025).

⁶ *Id.*



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9 After months of travel, M-Z-H presented himself at the U.S.-Mexico Border to request
10 asylum on December 7, 2023. *Id.* ¶ 11, Ex. A, Notice to Appear (Dec. 11, 2023). Agents of
11 Respondent DHS’s sub-agency, Customs and Border Protection, then decided that he posed
12 neither a danger to the community nor a flight risk and released him on his own recognizance.
13 Ex. B, Order of Release on Recognizance (Dec. 11, 2023). On April 4, 2024, M-Z-H filed a
14 properly completed application for Asylum, Withholding of Removal and Protection under CAT
15 with the Executive Office of Immigration Review (EOIR), well before his one-year filing
16 deadline of December 07, 2024. Ex. C, Application for Asylum, Withholding of Removal and
17 Protection Under CAT (Apr. 4, 2024).

18 **Detention of M-Z-H**

19 As a condition of his release, Respondent ICE placed M-Z-H on an Alternative to
20 Detention (ATD) program. Petitioner’s Decl. ¶ 16. ATD generally requires participants to
21 download an application to their mobile phone; attend regularly scheduled ‘check-ins’ with an
22 ICE officer; and report by submitting a picture of oneself through the application. *Id.* M-Z-H was
23 required to report via photo submission every Thursday from 10:00AM to 12:00PM. *Id.* Through

1 the same application, some individuals are subject to further check-ins with the ICE officers by
2 periodic voice or video phone calls. *Id.* Every 2-3 months, an ICE officer would call M-Z-H via
3 the app as an extra form of ensuring compliance. *Id.*

4 On July 24, 2025, M-Z-H was scheduled for a Master Calendar Hearing before the
5 Portland Immigration Court at the same time as his scheduled ICE check-in. *Id.* ¶ 17. M-Z-H-
6 was required to attend this hearing not only to proceed with his asylum case, but also by the
7 requirements of his order of release on recognizance. Petitioner's Decl., Ex. B.⁷ M-Z-H informed
8 the ICE officer via the application ahead of the date court hearing to make ICE aware he would
9 not be able to attend his scheduled check-in due to his obligation to attend all immigration court
10 hearings. Petitioner's Decl. ¶ 17. The ICE officer confirmed receipt of the notice and simply
11 instructed M-Z-H to check-in via telephone when the proceedings were adjourned. *Id.* Upon
12 adjournment, M-Z-H attempted to check in remotely via the app, however technical difficulties
13 did not allow the call to go through. *Id.* ¶ 18. This did not stop M-Z-H from complying with his
14 terms of release; he immediately went to the ICE Field office in person to resolve the issue that
15 same day. *Id.* An ICE agent reinstalled the phone application on M-Z-H's mobile device, and an
16 assured him that the incident would not be considered as a missed check-in. *Id.* ¶ 19.

17 Around two months prior to being detained, M-Z-H was admitted into an emergency
18 room, because he was experiencing a heart arrhythmia. *Id.* ¶ 20. This caused M-Z-H to miss a
19 remote check in with the ICE officer that was scheduled the same day. *Id.* The day after he was
20 discharged, M-Z-H notified his ICE officer via the application that he had not been available for
21 his check-in as he was in the emergency room. *Id.* ¶ 23. The ICE officer instructed M-Z-H to

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23 ⁷ According to the I-220A issued to him, M-Z-H- had to comply with six specific conditions; none of which involved
or required his enrollment in a mobile phone application. Thus, his arrest by Respondents for alleged failures related
to the mobile phone application (which he contests) cannot form a proper basis for the revocation of his release.

1 send proof of his hospital visit by uploading documents via the application. *Id.* M-Z-H complied
2 with this instruction promptly and uploaded proof of his emergency room visit. *Id.* A few days
3 later, an ICE officer acknowledged receipt of the medical documents during a video check-in and
4 confirmed to M-Z-H that he was not in violation of his release agreement. *Id.* ¶ 24.

5 Nevertheless, Petitioner was detained by Respondents on November 12, 2025, without
6 cause. *Id.* ¶ 26. While Petitioner was inside his vehicle waiting for his shift to start at work, three
7 SUVs with encircled his car. *Id.* ¶ 27. Masked men approached the driver's side door and one of
8 them demanded that the Petitioner to turn off the vehicle and step out. *Id.* ¶ 28. The masked man
9 identified himself to Petitioner as "the police." *Id.*

10 Petitioner promptly complied with the order and stepped out of the vehicle, only to be
11 handcuffed and told he would be taken to the officers' office. *Id.* ¶ 29-30. Officers walked M-Z-
12 H to one of the SUVs and placed him into their vehicle. *Id.* ¶ 31. At no point was M-Z-H ever
13 advised of his rights. *Id.* ¶ 32. Petitioner asked the officers why he had been arrested. *Id.* ¶ 33.
14 The officers initially replied that they did not know and that the information would be given to
15 him by the judge. *Id.* Officers then questioned him about his nationality, work history, and
16 current address. *Id.* ¶ 34. Petitioner answered the officers' questions and mentioned that he had
17 his asylum application pending with the immigration court. *Id.* ¶ 34. An officer then claimed that
18 M-Z-H had failed to appear for an immigration court hearing in August of 2025. *Id.* ¶ 35. M-Z-H
19 attempted to explain to the officers that this was not true, but the officers simply responded that
20 he would have to ask the judge. *Id.* ¶ 36.

21 After arriving to the ICE Field Office in Portland Oregon, Petitioner once again asked an
22 ICE officer why he had been arrested. *Id.* ¶ 37. This officer stated that M-Z-H had breached
23 immigration law by not attending a check-in. *Id.* Petitioner inquired about more details, such as

1 the date of the alleged missed appointment, but the officer told him he would have to wait to ask
2 the judge. *Id.* ¶ 39. Petitioner’s suspicion that the officers did not know his identity grew during
3 his time in the Field Office, especially when the officers handed M-Z-H a form asking him to
4 provide his A-file Number and other basic biographic data. *Id.* ¶ 40. Petitioner also inquired as to
5 whether he could contact his wife and advise her that he had been arrested. *Id.* ¶ 41. However,
6 officers told M-Z-H that he would not be allowed to call anyone until he was transferred to
7 Tacoma. *Id.* On November 12, 2025, around 10:00 p.m., Respondents moved Petitioner the
8 NWIPC in Tacoma, Washington. *Id.* ¶ 42.

9 At no point since Petitioner’s arrest, have Respondents asked about his family or
10 community ties, nor have they conducted an individualized assessment regarding whether
11 Petitioner poses a risk of flight or dangerousness.

12 II. LEGAL STANDARDS

13 The standard for issuing a TRO is the same as the standard for issuing a preliminary
14 injunction. *See New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2
15 (1977). A TRO is “an extraordinary remedy that may only be awarded upon a clear showing that
16 the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24
17 (2008). “The proper legal standard for preliminary injunctive relief requires a party to
18 demonstrate (1) ‘that he is likely to succeed on the merits, (2) that he is likely to suffer
19 irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his
20 favor, and (4) that an injunction is in the public interest.’” *Stormans, Inc. v. Selecky*, 586 F.3d
21 1109, 1127 (9th Cir. 2009) (*citing Winter*, 555 U.S. at 20).

22 As an alternative to this test, a temporary restraining order or preliminary injunction is
23 appropriate if “serious questions going to the merits were raised and the balance of the hardships

1 tips sharply in the plaintiff's favor," thereby allowing preservation of the status quo when
2 complex legal questions require further inspection or deliberation. *Alliance for the Wild Rockies*
3 *v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).

4 III. ARGUMENT

5 Petitioner's Motion for a Temporary Restraining Order should be granted because he is
6 likely to succeed on the merits of his habeas claims; he suffers irreparable harm every moment
7 he remains unlawfully detained; and the balance of the equities and public interest weigh
8 strongly in favor of restoring his liberty.

9 A. Petitioner is likely to succeed on the merits of his Petition for Writ of Habeas 10 Corpus.

11 1. *Respondents' arbitrary, policy-driven detention of Petitioner violates* *fundamental right to due process, as alleged in Count One of the Petition.*

12 M-Z-H was entitled to a meaningful opportunity to be heard prior to his detention under
13 the Due Process Clause of the U.S. Constitution. The Due Process Clause required Respondents
14 to provide a meaningful opportunity for M-Z-H to be heard on his detention prior to making any
15 individualized custody determination. Their failure to do so violates his constitutional Due
16 Process rights.

17 The Due Process Clause provides that "No person shall be . . . deprived of life, liberty, or
18 property without due process of law." U.S. Const. amend V. The Due Process Clause applies to
19 "all 'persons' within the United States," irrespective of their immigration status. *Trump v.*
20 *J.G.G.*, 604 U.S. 670, 673 (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *Zadvydas*, 533
21 U.S. at 693. Due process requires that government action be rational and non-arbitrary. *See U.S.*
22 *v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). Due process requires notice and "the opportunity
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1 to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S.
2 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

3 Where the government seeks to deprive an individual of a protected interest, the Supreme
4 Court has directed that courts balance three factors to determine what process is due:

5 First, the private interest that will be affected by the official action; second, the
6 risk of an erroneous deprivation of such interest through the procedures used, and
7 the probable value, if any, of additional or substitute procedural safeguards; and
8 finally, the Government’s interest, including the function involved and the fiscal
9 and administrative burdens that the additional or substitute procedural
10 requirement would entail.

11 *Mathews*, 424 U.S. at 335. As this Court recently explained in *E.A. T.-B.*, the three-factor test
12 established in *Mathews* is the controlling framework for determining what process M-Z-H is due.
13 *E.A. T.-B.*, 2025 WL 2402130, at *3; *see also Ramirez Tesara*, Dkt. 19 at 5–9 (applying *Mathews*
14 factors to assess right to pre-deprivation hearing). Here, all three factors strongly favor M-Z-H.

15 First, M-Z-H has an exceptionally strong interest in freedom from physical confinement
16 and in an opportunity to be heard prior to any restraint of his liberty. Indeed, his “interest in not
17 being detained is ‘the most elemental of liberty interests[.]’” *E.A. T.-B.*, 2025 WL 2402130, at *3
18 (alteration in original) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); *see also Ramirez*
19 *Tesara*, Dkt. 19 at 5 (stating that the petitioner “has an exceptionally strong interest in freedom
20 from physical confinement”). “Freedom from imprisonment . . . lies at the heart of the liberty
21 that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. Thus, “[d]etention, including
22 that of a non-citizen, violates due process if there are not ‘adequate procedural protections’ or
23 ‘special justification[s]’ sufficient to outweigh one’s ‘constitutionally protected interest in
avoiding physical restraint.’” *Perera v. Jennings*, 598 F. Supp. 3d 736, 742 (N.D. Cal. 2022)
(second alteration in original) (quoting *Zadvydas*, 533 U.S. at 690). Similarly, the Ninth Circuit
has held that “[i]n the context of immigration detention, it is well-settled that ‘due process

1 requires adequate procedural protections to ensure that the government’s asserted justification
2 for physical confinement outweighs the individual’s constitutionally protected interest in
3 avoiding physical restraint.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting
4 *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). The Supreme Court has long underscored
5 this point. *See, e.g., Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (“It is clear that commitment
6 for any purpose constitutes a significant deprivation of liberty that requires due process
7 protection.” (citation omitted)). Petitioner’s liberty interest is particularly weighty give the civil
8 context of immigration detention. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal.
9 2019) (explaining that “[g]iven the civil context, [a noncitizen’s] liberty interest is arguably
10 greater” that the interest of parolees in the criminal context).

11 Second, M-Z-H has a strong interest in his liberty. Petitioner grew up and devoted his life
12 to public service as a government worker in Afghanistan. Petitioner’s Decl., ¶ 2. He now lives in
13 Oregon with his wife and children as they patiently wait for the adjudication of their asylum. *See*
14 Petitioner’s Decl., Ex C. As soon as he became eligible for work authorization, he began
15 working in Portland, Oregon to support his family as they navigate the process of their removal
16 proceedings and his family continues to engrain into life in the United States. *See* Petitioner’s
17 Decl., Ex D. He finds purpose in providing a safe life for his family.

18 Third, “the risk of erroneous deprivation of M-Z-H’s liberty interest in the absence of a
19 pre-detention hearing is high.” *E.A. T.-B.*, 2025 WL 2402130, at *4. “That the Government may
20 believe it has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the
21 detention in a manner that comports with due process.” *Id.* Respondents have provided
22 contradictory and blatantly untrue alleged justifications for his re-detention. *See* Petitioner’s
23 Decl. ¶¶ 33, 35, 37-39. The first arresting officer stated that he did not know why Petitioner was

1 being re-detained; a second claimed he had missed an immigration court hearing; and a third
2 claimed he had missed an ICE check-in. *Id.* Petitioner has not missed any obligation related to
3 his immigration case but, without an opportunity to contest the false allegations, nevertheless
4 remains detained, in violation of his due process rights.

5 The arbitrary and unlawful nature of M-Z-H's detention is underscored by the fact that
6 the arresting officers themselves did not know, basic facts about M-Z-H. *Id.* ¶ 40 (ICE agents
7 asking Petitioner for basic biographic data, such as his A-file Number). This suggests that they
8 did not have any particularized reason to detain M-Z-H, rather, they were merely seeking to fill
9 their detention quota. *See* Pet. For Writ of Habeas Corpus ¶¶ 55-59.

10 Finally, any government interest in detaining M-Z-H without notice and an opportunity to
11 be heard is weak, as the procedural safeguard that Petitioner seeks is merely what Respondents
12 are already legally required to do: provide him an opportunity to be heard so that they can
13 conduct an individualized assessment to determine whether his individual facts and
14 circumstances make him a flight risk or a danger to the community. *See* 8 U.S.C. § 1226(a);
15 *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. at 38. Had Respondents conducted
16 such an assessment, they would have been compelled to conclude that M-Z-H facts and
17 circumstances did not support detention. Indeed, it is not clear that Respondents have *any* interest
18 in detaining Petitioner. *See Addington v. Texas*, 441 U.S. 418, 426 (1979). (“The [government]
19 has no interest in confining individuals involuntarily if they . . . do not pose some danger.”).

20 M-Z-H is likely to succeed on the merits of his due process argument, and the court can
21 grant the TRO and release M-Z-H to restore the status quo on this basis alone. Respondents'
22 decision to detain M-Z-H without any rational and individualized determination of whether he is
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1 a safety or flight risk and the failure to identify any government interest to detain him violates his
2 constitutional right to due process.

3 Petitioner is likely to succeed on the merits or, at a minimum, has raised serious questions
4 going to the merits of his warrantless arrest claims because Respondents conducted a warrantless
5 arrest of M-Z-H despite *no* evidence that he was in violation of immigration laws.

6 M-Z-H has a statutory and regulatory right to be free from warrantless immigration
7 arrests. Under the INA, an immigration officer may conduct a warrantless arrest only if that
8 officer has “reason to believe” that an individual is in the United States in violation of the
9 immigration laws and is “likely to escape before a warrant can be obtained for [their] arrest.” 8
10 U.S.C. § 1357(a)(2). A “reason to believe” is equivalent to “the constitutional requirement of
11 probable cause.” *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980). “Put simply,
12 immigration enforcement officers may conduct a warrantless arrest only if they have probable
13 cause to believe that a person is both in the United States unlawfully *and* an escape risk.”
14 *Escobar Molina v. U.S. Dep’t of Homeland Sec.*, No. 25-3417 (BAH), at 29 (D.D.C. Dec. 2,
15 2025). Here, officers had neither.

16 Respondents conducted a warrantless arrest of M-Z-H despite *no* evidence – let alone
17 probable cause – that he was unlawfully in the United States. 8 C.F.R. § 287.8(c)(2)(i) specifies
18 that before making a warrantless arrest, an immigration officer must have probable cause “to
19 believe that the person to be arrested has committed an offense against the United States or is [a
20 noncitizen] illegally in the United States.” The facts strongly suggest that Respondents seized
21 Petitioner as part of a roving immigration inspection conducted in the state of Oregon, as
22 Petitioner was simply waiting in his car to begin his workday. *See* Petitioner’s Decl. ¶ 26.
23

1 Petitioner was arrested in his when three SUVs surrounded his car and masked officers ordered
2 M-Z-H out of the car and told he should accompany them. *See Id.* ¶¶ 28-30. The officers
3 demonstrated that they did not know who the Petitioner was upon arrest, as they asked him for
4 basic information about his identity, country of origin, and even to provide his A-file number and
5 biographic information. *See Id.* ¶¶ 34, 40. Not knowing his identity before their arrest, they
6 lacked the probable cause to believe M-Z-H- was unlawfully in the United States and presented
7 an escape risk.

8 **2. Respondents are violating the INA by detaining Petitioner under the wrong**
9 **legal authority, as alleged in Count Two of the Petition.**

10 Petitioner is likely to succeed on his claim that Respondents are detaining him under an
11 erroneous legal framework. Petitioner is in standard removal proceedings under 8 U.S.C. §
12 1229a. *See* Petitioner’s Decl., Ex A. The default and controlling statutory authority for detention
13 in such proceedings is 8 U.S.C. § 1226(a), which affords a right to an individualized bond
14 hearing. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

15 Removal hearings held under § 1229a, “decid[e] the inadmissibility or deportability of a[]
16 [noncitizen].” The language explicitly applies to people charged as being inadmissible, including
17 those who are alleged to have entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E).
18 Subparagraph (E)’s reference to such people makes clear that, by default, such people are
19 afforded a bond hearing under subsection (a). And “[w]hen Congress creates ‘specific
20 exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute
21 generally applies.” *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash.
22 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400
23 (2010)).

1 U.S.C. § 1225(b) on the other hand expressly applies to people arriving at U.S. ports of
2 entry or who recently entered the United States. The statute’s entire framework is premised on
3 inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. §
4 1225(b)(2)(A). As the Supreme Court has explained, this mandatory detention scheme applies “at
5 the Nation’s borders and ports of entry, where the Government must determine whether a[]
6 [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287
7 (2018).

8 Section 1226’s detention authority therefore undoubtedly applies to people who face
9 charges of being inadmissible to the United States, including individuals who are alleged to be
10 present without admission or parole. Dozens of federal courts have agreed. *Gomes v. Hyde*, No.
11 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No.
12 CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v.*
13 *Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025),
14 *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133
15 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL
16 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025
17 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW
18 (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM,
19 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025
20 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF,
21 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-
22 JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-
23 KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051

1 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025)); *Lopez-Campos*
2 *v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);
3 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,
4 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D.
5 Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.
6 Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.
7 Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2
8 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not §
9 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL
10 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-
11 RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

12 Respondents’ potential misapplication of the mandatory detention scheme under 8 U.S.C.
13 § 1225(b) is a fundamental legal error. Section 1225(b) applies to individuals “arriving in the
14 United States” or apprehended at the border, not to individuals like Petitioner who were released
15 into the community and have been in standard removal proceedings for nearly two years. See
16 *Jennings*, 583 U.S. at 287 (describing § 1225(b) as applying “at the Nation’s borders and ports of
17 entry”).

18 This misapplication was squarely rejected by a recent nationwide class ruling in
19 *Maldonado Bautista v. Santacruz*, --- F. Supp. 3d ---, 2025 WL 3289861, at *10–16 (C.D. Cal.
20 Nov. 20, 2025), which held unequivocally that noncitizens in standard § 1229a proceedings are
21 governed by § 1226(a), not § 1225(b). Thus, Respondents are detaining Petitioner either (a)
22 unlawfully under § 1225(b), or (b) in violation of § 1226(a) by denying him the requisite bond
23 hearing. Under either construction, the detention violates the INA.

1 **3. Respondents violated the APA and their own regulations by detaining**
2 **Petitioner without required procedures, as alleged in Count Three of the**
3 **Petition.**

4 M-Z-H was entitled to a meaningful opportunity to be heard prior to his detention by
5 statute and regulation. Following a warrantless arrest, 8 U.S.C. § 1357(a)(2) requires that the
6 individual arrested “shall be taken without unnecessary delay” for further consideration of “their
7 right to enter or remain in the United States.” Under 8 U.S.C. § 1226(a), immigration officers
8 may choose to either extend detention or to release an individual from custody; this decision is
9 based on an individualized determination of their danger and flight risk. *See* 8 U.S.C. § 1226(a);
10 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).
11 The regulations require an individualized opportunity to be heard on whether detention is
12 warranted. The regulation at 8 C.F.R. § 287.3(d) requires that, within 48 hours of a warrantless
13 immigration arrest, an immigration officer make an individualized custody determination as to
14 whether the noncitizen should remain in custody or be released. Likewise, 8 C.F.R. § 236.1(c)(8)
15 requires an opportunity for the noncitizen to be heard on flight risk and dangerousness.

16 The Respondents denied M-Z-H a meaningful opportunity to be heard in violation of the
17 statute and regulations. Under the APA, a court shall “hold unlawful and set aside agency action”
18 that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory
19 jurisdiction, authority, or limitations;” or “without observance of procedure required by law.” 5
20 U.S.C. § 706(2)(A)-(D). Because Respondents have denied M-Z-H an opportunity to be heard
21 for an individualized determination as to whether his custody should be continued, their
22 continued detention of M-Z-H is in violation of the statute, regulations, and the APA.

23 **B. Petitioner will likely suffer irreparable harm if not granted preliminary relief.**

1 M-Z-H must show that he is “likely to suffer irreparable harm in the absence of
2 preliminary relief.” *Winter*, 555 U.S. at 20. Irreparable harm is the type of harm for which there
3 is “no adequate legal remedy, such as an award of damages.” *Ariz. Dream Act Coal. v. Brewer*,
4 757 F.3d 1053, 1068 (9th Cir. 2014).

5 M-Z-H has suffered and will likely continue to suffer irreparable harm. Here, M-Z-H’s
6 unlawful detention constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v.*
7 *Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated in*
8 *part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir.
9 2022); *cf. Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable harm is met
10 where “preliminary injunction is necessary to ensure that individuals . . . are not needlessly
11 detained” because they are neither a danger nor a flight risk). The irreparable harm from
12 unlawful detention is particularly acute for M-Z-H, as his detention also violates the
13 Constitution. *See supra* at § IV.A.2. “It is well established that the deprivation of constitutional
14 rights unquestionably constitutes irreparable injury.” *Hernandez*, 872 F.3d at 994 (internal
15 quotation omitted); *see also Baird v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that
16 “in cases involving a constitutional claim, a likelihood of success on the merits usually
17 establishes irreparable harm”).

18 Without intervention from this Court, it is also very possible that Respondents will
19 transfer Petitioner to another immigration detention facility far away from his lawyers, his
20 family, and his support system – as they have done in many other cases. Respondents have
21 recently implemented a detention and transfer policy to detain and rapidly remove non-citizens
22 outside of the United States, to sites including El Salvador, Cuba, and South Sudan.

1 Respondents' transfer of Petitioner out of this district could irreparably jeopardize his life, as
2 well as those of his wife and children.

3 Respondents' transfer would also cause irreparable harm to Petitioner by depriving him
4 of proximity to his counsel and impeding his ability to engage in these immediate judicial
5 proceedings. *See Arroyo v. United States Dep't of Homeland Sec.*, 2019 WL 2912848, at *17
6 (C.D. Cal. June 20, 2019) (observing that "a significant burden on the attorney-client
7 relationship, without a showing of underlying prejudice to the removal proceedings, may be
8 sufficient to establish a legal injury sufficient to justify injunctive relief"), citing *Comm. of Cent.*
9 *Am. Refugees v. I.N.S.*, 795 F.2d 1434, 1439 (9th Cir. 1986), *amended on other grounds*, 807
10 F.2d 769 (9th Cir. 1986).

11 The unlawful deprivation of liberty causes M-Z-H direct and immediate irreparable
12 harms that warrant a TRO.

13 **C. The balance of the equities and public interest factors tip sharply in favor of**
14 **preliminary relief.**

15 A TRO should be granted because the balance of equities tips sharply in favor of M-Z-H.
16 Petitioner has established that "the balance of the equities tip in [his] favor and that an injunction
17 is in the public interest." *See Winter*, 555 U.S. at 20. When the federal government is a party, the
18 balance of the equities and public interest factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747
19 F.3d 1073 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

20 Here, M-Z-H faces weighty hardships: loss of liberty and deprivation of the right to earn
21 a living. The government, by contrast, faces no hardship as M-Z-H is neither a flight risk nor a
22 danger to the community. Avoiding such "preventable human suffering" strongly tips the
23 balance in favor of M-Z-H. *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d
1432, 1437 (9th Cir. 1983)).

1 What is more, “the public interest benefits from an injunction that ensures that
2 individuals are not deprived of their liberty and held in immigration detention because of . . . a
3 likely [illegal] process.” *Hernandez*, 872 F.3d at 996. Indeed, “in cases involving a constitutional
4 claim, a likelihood of success on the merits . . . strongly tips the balance of equities and public
5 interest in favor of granting a preliminary injunction.” *Baird*, 81 F.4th at 1048. The merits of the
6 due process violations that Petitioner has raised in his habeas petition further weight the public
7 interest toward emergency relief. “Generally, public interest concerns are implicated when a
8 constitutional right has been violated, because all citizens have a stake in upholding the
9 Constitution.” *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005); *see also Zepeda v. U.S.*
10 *I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (concluding that “the INS cannot reasonably assert that
11 it is harmed in any legally cognizable sense by being enjoined from constitutional violations”).
12 In addition, “the public interest also benefits from a preliminary injunction that ensures that
13 federal statutes are construed and implemented in a manner that avoids serious constitutional
14 questions.” *Rodriguez*, 715 F.3d at 1146.

15 Even when considered from a fiscal perspective, the public interest in the efficient
16 allocation of the government’s financial resources weighs in favor of emergency relief here. As
17 the Ninth Circuit has explained, “[t]he costs to the public of immigration detention are
18 “staggering”: \$158 each day per detainee, amounting to a total daily cost of \$6.5 million.”
19 *Hernandez*, 872 F.3d at 996. The interests of the general public will not be served by Petitioner’s
20 detention where he is neither a flight risk nor a danger to the community.

21 Accordingly, the balance of hardships and the public interest tip sharply in favor of a
22 temporary restraining order to return Mr. Hernandez to the status quo, releasing him from
23 detention while the Court adjudicates his habeas petition.

1 **D. Immediate release is warranted to restore the *status quo ante litem*.**

2 As in *Ramirez Tesara, Phetsadakone, E.A. T.-B., and Kumar*, this Court should order M-
3 Z-H's immediate release. "[A] post-deprivation hearing cannot serve as an adequate procedural
4 safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty." *E.A.*
5 *T.-B.*, 2025 WL 2402130, at *6. In other words, M-Z-H's unlawful detention without a pre-
6 deprivation opportunity to be heard is *already* occurring, and only immediate release can restore
7 the status quo.

8 As this Court explained in *Ramirez Tesara*, M-Z-H's "immediate release is necessary to
9 restore the status quo ante litem. This 'refers not simply to any situation before the filing of a
10 lawsuit, but instead to the last uncontested status which preceded the pending controversy.'" *Ramirez Teresa*,
11 Dkt. 19 at 10 (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210
12 (9th Cir. 2000)); *see also Phetsadakone*, 2025 WL 2579569, at *5 (concluding that restoring
13 petitioner to his prior liberty "maintains the status quo ante litem and prevents irreparable harm
14 while allowing full adjudication of his claims for injunctive relief and on the merits"). As in
15 these cases, here the pending controversy stems from Petitioner's unlawful arrest, which led to
16 his current unlawful custody.

17 Moreover, the principles that govern this case are now well-established. In the past
18 month, this Court has repeatedly affirmed that it is unlawful for Respondents to detain persons
19 like M-Z-H without first providing a hearing where the detained person can demonstrate that
20 they do not present a flight risk or a danger to the community. These decisions are consistent
21 with other district courts' conclusions across the country.

22 Accordingly, Petitioner respectfully requests that the Court grant a TRO ordering his
23 immediate release from custody. Immediate release is the only relief that will fully restore the

1 *status quo ante litem*. In the alternative, however, the Court may order that a § 1226(a) bond
2 hearing be held within seven days of the Court's order, at which Petitioner would have the
3 chance to demonstrate that he is neither a flight risk nor a danger to the community. The Court
4 should then direct Respondents to respond to an order to show cause with any arguments or
5 additional information they believe is necessary so that this Court can issue the writ of habeas
6 securing M-Z-H's continued right to liberty.

7 **IV. CONCLUSION**

8 For the foregoing reasons, Petitioner respectfully requests that this Court grant his motion
9 for a temporary restraining order, restoring the status quo by granting M-Z-H release from
10 custody while the Court adjudicates his pending Petition for Writ of Habeas Corpus. Petitioner
11 respectfully requests that the Court order Respondents to respond to this Motion by noon on
12 December 12, 2025; allow Petitioner to file a reply by noon on December 15, 2025; and issue a
13 decision by December 16, 2025. If the Court finds a hearing to be necessary, Petitioner
14 respectfully requests that the hearing take place on December 17, 2025, subject to the Court's
15 availability.

16 Dated: December 09, 2025.

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23 **Appearing Pro Hac Vice*

1 **LCR 7(e) WORD COUNT CERTIFICATION**

2 I certify that this motion and memorandum contains 7,026 words, in compliance with the
3 Local Civil Rules.

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